The Ocean Enclosure Movement: Inventory and Prospect

LEWIS M. ALEXANDER*

Since Grotius' time, the ocean enclosure movement has claimed nearly one-third of global ocean space, with the greatest "gains" having taken place since 1945. The author traces the development of the various maritime regimes, and assesses their future viability in light of the United Nations Convention on the Law of the Sea.

INTRODUCTION

During the past several decades the coastal States of the world have been extending seaward their claims to jurisdiction over what has traditionally been recognized as the free seas. Claims have been both *geographical*, applied to specific maritime areas enclosed by boundaries, and *functional*, pertaining to certain competences such as control over fishing or drilling for hydrocarbons on the continental shelf. The net effect of these claims has been the gradual partitioning of nearly one-third of the global ocean into various types of maritime zones.

The process of expanding maritime claims, sometimes termed "creeping jurisdiction" or "the ocean enclosure movement," may be approaching a temporary plateau. Most of the coastal States with at least moderate offshore areas in which to advance their claims, have declared a 200-mile jurisdictional zone, either exclusive economic, or exclusive fisheries in nature.[1] And while the possibility exists that some of these States may increase their as-

* The Geographer, U.S. Department of State. The views expressed are the author's and do not necessarily reflect the opinions of the United States Government.

1. *See* OFFICE OF THE GEOGRAPHER, BUREAU OF INTELLIGENCE & RESEARCH

sertions of competence to the point where the zones become 200-mile territorial seas, the prospects would not now seem to be great, given the textual provisions of the United Nations Convention on the Law of the Sea (Convention), and the fact that for a time at least the text will be undergoing a process of ratification. For the above reasons the time may be right to survey the progress of the ocean enclosure movement. In this article there will be, first, a consideration of the development of the maritime jurisdictional regime, then a treatment of the impacts of current jurisdictional claims on ocean use, and finally a brief assessment of some potential trends in the ocean enclosure movement.

Development of the Maritime Jurisdictional Regime

"Free" vs. "Closed" Seas

The concept of the free seas is an historic one, dating back to the voyages of the Phoenicians, the Greeks and the Romans. Under the free seas concept, navigation could expand as demand and capabilities warranted. But the Romans, as their empire grew, saw certain advantages in controlling navigation, and gradually a "Mare Nostrum" regime evolved for the Mediterranean whereby non-Roman vessels were subject to various forms of restriction. Later, the practice of infringing on freedoms of navigation developed farther north. In 1201 England issued an ordinance requiring all vessels at sea to lower their sails when so ordered by English warships,[2] and by the end of the thirteenth century Norwegian law forbade foreign ships from sailing north of Bergen without a royal license.[3]

In the early seventeenth century, the Dutch, with their overseas maritime interests, had become the foremost champions of the freedom of the seas, and in 1605 Hugo Grotius, a young Dutch lawyer, wrote *De Jure Praedae*, the twelfth chapter of which was republished as *Mare Liberum*.[4] Grotius contended that the sea could not be subjected to private ownership, except in the case of gulfs and straits, and that navigation and fishing rights of all countries in the free seas should be respected.[5] "Grotius was cited by the Dutch ambassador to London in a protest against British policies toward foreign fishermen, and it was during this

U.S. Dep't of State, Limits in the Seas No. 36, at 2-7 (4th rev. 1981) [hereinafter cited as Limits in the Seas No. 36].

2. C. Meyer, The Extent of Jurisdiction in Coastal Waters 5 (1937).

3. *Id.* at 478.

4. H. Grotius, Mare Liberum Sive De Jure Quod Batavis Competit Ad Indicana Commercia (1618).

5. L. Alexander, Offshore Geography of Northwestern Europe 11 (1963).

discussion in 1610 that the maximum range of shore-based cannon was first suggested as a possible limit for offshore control."[6]

The free seas concept was challenged by the British, who were claiming exclusive fishing rights off their coasts and were concerned with smuggling and protection of neutrality in their coastal waters. In 1619, John Selden published *Mare Clausum* which maintained that the seas were indeed capable of ownership and, since the resources of the seas were by no means inexhaustible, a State had the right to protect its interests by restricting the use of certain areas.[7] "In the closing years of the seventeenth century and the earlier part of the next there were many signs that the era of claiming exclusive sovereignty over extensive regions of the sea was passing away; and that . . . the policy of fixing exact boundaries for special purposes, either by international treaties or national laws, was taking its place."[8]

The marriage of the cannon-shot and fixed-distance concepts for establishing areas of offshore control was a long and complex one. Bynkershoek, a Dutchman, published *De Domino Maris* in 1702, in which he contended that effective dominion over offshore areas could be maintained only by shore-based fortifications.[9] Yet in the interests of protection against smuggling, neutrality violations, and foreign fishing, it was clearly necessary that some sort of coastal zone of fixed breadth be delimited. In 1736 the British adopted the first of of their "Hovering Acts," establishing a customs zone twelve miles in breadth along their coasts.[10]

The concept of the three-mile limit for offshore control is generally credited to the Italian jurist Galiani, who in 1782 published a treatise in which he suggested that three miles be taken as the breadth of uniform belts of sovereignty along the coast.[11] Although he mentioned three miles as the maximum range of cannon, the distance was well in excess of any cannon range at that

6. S. RIESENFELD, PROTECTION OF COASTAL FISHERIES UNDER INTERNATIONAL LAW (Washington, D.C.: Carnegie Endowment for International Peace, Division of International Law, Monograph No. 7, 1942).

7. L. ALEXANDER, *supra* note 5, at 11.

8. T. FULTON, THE SOVEREIGNTY OF THE SEA 523 (1911).

9. L. ALEXANDER, *supra* note 5, at 12.

10. W. MASTERSON, JURISDICTION IN MARGINAL SEAS WITH SPECIAL REFERENCE TO SMUGGLING 26 (1929).

11. GALIANI, DE' DOVERI DE' PRINCIPI NEUTRALI VERSO I PRINCIPI GUERREGIANTI, E DI QUESTI VERSO I NEUTRALI (1782).

time.[12] Actually Galiani's selection was based on a standard geographical measure, the marine league; eleven years after his publication appeared the United States proclaimed a neutrality zone three miles in breadth, based on what President Washington believed was the least distance claimed by any nation for neutrality purposes.[13] The American position gradually gained favor in Britain and, after the British victory at Trafalgar in 1805, the three-mile principle began to be accepted in other countries.[14]

Expanding Territorial Claims

During the nineteenth and early twentieth centuries little effort was made to standardize maritime rules and regulations on a worldwide basis. Most coastal States which proclaimed a specific breadth to the territorial sea claimed three miles,[15] although by the early 1920's four miles was claimed by Finland, Norway, Sweden and Denmark,[16] and six miles by Italy.[17] The position of the Soviet Union was unclear; a 1909 Russian law extended the maritime customs belt to twelve miles, and a 1911 law established a twelve-mile fishing zone along the far-eastern coast. Butler[18] holds that the 1921 and 1927 Soviet decrees referring to twelve-mile zones did not constitute declarations of a nationwide territorial sea, and that it was actually not until 1960 that a formal Soviet declaration on the territorial sea was made.

In 1930, a Conference on the Codification of International Law was held at The Hague, during which attention was focused on the issue of a standard breadth for the territorial sea and other offshore zones. A survey of state practice in 1930 revealed that twenty countries were claiming three miles as their territorial breadth, four were claiming four miles, and two were claiming six miles.[19] No consensus was reached at the Conference on a standard breadth for the territorial sea.

The process of territorial sea claims since 1930 might be divided

12. C. MEYER, *supra* note 2, at 47.
13. *See* H. CROCKER, THE EXTENT OF THE MARGINAL SEA (1919).
14. For background of the origins of the three-mile territorial limit, see P. JESSUP, THE LAW OF TERRITORIAL WATERS AND MARITIME JURISDICTION 3-7 (1927); Kent, *The Historical Origins of the Three-Mile Limit*, 48 AM. J. INT'L L., 537, 537-54 (1954); Walker, *Territorial Waters: The Cannon Shot Rule*, 22 BRIT. Y.B. INT'L L. 210 (1945).
15. All measurements are in nautical miles. One nautical mile equals 1.151 statute miles or 1.852 kilometers.
16. *See* S. SWARZTRAUBER, THE THREE-MILE LIMIT OF TERRITORIAL SEAS 108-51 (1972).
17. *Id.* at 148.
18. *See* W. BUTLER, THE SOVIET UNION AND THE LAW OF THE SEA 44 (1971).
19. LONDON: REFERENCE DIVISION, CENTRAL OFFICE OF INFORMATION, THE TERRITORIAL SEA (1960).

into several phases. The first period occurred from 1930 to the end of World War II. During this time a number of coastal States which heretofore had not made specific claims proceeded to do so; some of the claims being for more than three miles. Greece and Iran, for example, claimed six miles, Mexico claimed nine miles, and Guatemala twelve miles.[20] By 1945, twenty-seven of forty-four reporting States (61 percent) claimed three-mile territorial seas, fifteen claimed between four and twelve miles, and two—Guatemala and the Soviet Union[21]—claimed twelve miles.[22]

The second phase, termed the "new era" in territorial claims, began in 1945 with the Truman Proclamation stating that the United States exercised jurisdiction and control over the natural resources of its contiguous continental shelf.[23] Although the statement did not include a specific outer limit to the shelf, an accompanying legal memorandum suggested the 100-fathom (600-foot) isobath as the maximum depth.[24] The Proclamation was unilateral; no other country had advanced such a claim. The text also specified that the superjacent waters, beyond territorial limits, would continue to have the status of high seas.[25] However, an accompanying proclamation stated that within the high seas areas contiguous to the United States coast the government reserved the right to establish fishery conservation zones, should these prove necessary.[26]

The Truman Proclamation unleashed a flurry of new maritime claims. In October 1945, Mexico proclaimed jurisdiction over its continental shelf and established a fishery conservation zone of unclear seaward limits.[27] The following year both Argentina and Panama claimed control of the resources of their adjacent shelves and of the superjacent waters, and in 1947 Chile and Peru de-

20. Boggs, *National Claims in Adjacent Seas*, 41 GEOG. REV. 185, 192-98 (1951).

21. Most surveys of territorial sea claims credit the Soviet Union with adopting a twelve-mile breadth in 1927.

22. Johnston & Gold, *Extended Jurisdiction: The Impact of UNCLOS III on Coastal State Practice*, in LAW OF THE SEA: STATE PRACTICE IN ZONES OF SPECIAL JURISDICTION 31 (1982).

23. Proclamation No. 2667, 10 Fed. Reg. 12303 (1945), *reprinted in* S. ODA, THE INTERNATIONAL LAW OF THE OCEAN DEVELOPMENT: BASIC DOCUMENTS 341 (1972).

24. A. HOLLICK, U.S. FOREIGN POLICY AND THE LAW OF THE SEA 49 (1981).

25. Proclamation No. 2667, *supra* note 23.

26. Proclamation No. 2668, 10 Fed. Reg. 12304 (1945), *reprinted in* S. ODA, *supra* note 23, at 342.

27. Krueger & Nordquist, *The Evolution of the 200-Mile Exclusive Economic Zone: State Practice in the Pacific Basin*, 19 VA. J. INT'L L. 321, 326 (1979).

clared sovereignty over the resources of their contiguous waters to 200 miles from shore.[28] In 1952, Peru, Ecuador and Chile joined in the Santiago Declaration which proclaimed their sovereignty and jurisdiction out to 200 miles from the coast, while preserving the right of innocent passage beyond narrow territorial limits.[29]

In assessing trends in territorial claims since the end of World War II it is important to note the growth in the number of independent coastal States. In 1945 there were sixty-five States; by the end of 1982, the figure had grown to 137.[30] Virtually all of the new countries had been former colonies of the western powers—Britain, France, the Netherlands, Belgium, and the United States. As dependencies these countries assumed the conservative territorial breadths of their mother countries; with independence came the opportunity to expand their offshore claims.

The combination of reactions to the Truman Proclamation and the growth of new independencies combined to erode considerably the three-mile territorial limit. A survey taken in 1950 revealed that 59 percent of the States reporting specific territorial breadths claimed three miles. Eight years later, the percentage of three-mile claims had dropped to thirty-seven, with thirteen countries claiming twelve miles, and three claiming 200 miles.[31]

The Law of the Sea Conferences

The gradual seaward expansion of maritime claims was one of the compelling factors behind the support the United States and other maritime States gave to the convening of the First United Nations Conference on the Law of the Sea (UNCLOS I) in the spring of 1958. At the Conference the topic of territorial sea breadths was but one of a wide spectrum of subjects negotiated. Ultimately, four Conventions emerged covering the issues of the continental shelf, fisheries, the high seas, and the delimitation of the baseline from which the breadth of the territorial sea is measured.[32] But no consensus was reached on a standard breadth of the territorial sea.[33] The "traditionalists" held out for three miles

28. *Id.*
29. *Id.*
30. OFFICE OF THE GEOGRAPHER, U.S. DEP'T OF STATE, STATUS OF THE WORLD'S NATIONS 2 (1980).
31. LIMITS IN THE SEAS No. 36, *supra* note 1.
32. Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205; Convention on the High Seas, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82; Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311; Convention on Fishing and Conservation of Living Resources of the High Seas, Apr. 29, 1958, 17 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285.
33. A. HOLLICK, *supra* note 24, at 152-53.

while others maintained that States should be free to choose breadths of up to twelve miles.

The search for consensus on several maritime issues led to the convening of a Second United Nations Conference in Geneva in 1960 (UNCLOS II). At that meeting a principal topic was again the choice of a standard breadth of the territorial sea.[34] By 1960 questions of exclusive fishing rights beyond territorial limits had become important, and a compromise proposal calling for a six-mile territorial sea (combined with an exclusive fisheries zone extending from six to twelve miles offshore) was narrowly defeated.[35] The United States had supported the compromise proposal, but, with the failure of the Conference to adopt the compromise, the United States resumed its support of the three-mile concept.

In the 1960's and early 1970's the number of coastal States and territorial claims beyond three miles continued to grow.[36] By 1972 only twenty-five out of 111 reporting States (22 percent) claimed a three-mile territorial sea.[37] Fifteen States claimed between three and twelve miles, fifty-six claimed twelve miles, and fifteen others claimed more than twelve miles, of which eight were 200 miles.[38] But the focus of world attention had shifted somewhat from territorial breadths to the projected resources of the deep seabed, and it was primarily the latter interest which led to the convening in December 1973 of the Third United Nations Conference on the Law of the Sea (UNCLOS III).[39] The negotiations, which lasted through the spring of 1982, resulted in the adoption of a Convention text,[40] article 3 of which reads "[e]very State has the right to

34. *Id.* at 140.

35. Smith, *Trends in National Maritime Claims*, 32 PROF. GEOG. 216, 218 (1980).

36. V. PRESCOTT, THE POLITICAL GEOGRAPHY OF THE OCEANS 68 (1975).

37. Johnston & Gold, *supra* note 22, at 43.

38. *Id.*

39. In the late 1960's both the United States and the Soviet Union were in favor of convening a Third United Nations Conference on the Law of the Sea because of their concern with the steadily increasing territorial sea claims. Eventually their efforts were supplemented by the support of a number of developing countries which had been stimulated by the "common heritage" concept for the deep seabed minerals.

40. The United Nations Convention on the Law of the Sea, U.N. Doc. A/CONF.62/122 (1982) [hereinafter cited as Convention], which was opened for signing on December 10, 1982, was the latest of a long series of texts, dating back to the Informal Single Negotiating Text of May 1975.

establish the breadth of its territorial sea up to a limit not exceeding twelve nautical miles . . . ."

Recent Activities

By the end of 1982, twenty-four States out of a total of 125 reporting (19 percent) still claimed a three-mile territorial sea (Appendix, Table 1).[41] Six countries had claims between four and twelve miles, while seventy-seven states (60 percent) asserted twelve-mile claims.[42] Because of the wording of article 3 of the Convention text, territorial claims of greater than twelve miles would be in violation of the Convention; nevertheless, twenty-six countries claimed breadths greater than twelve miles (fourteen of these to 200 miles).[43] One possible compromise is that worked out by Argentina, El Salvador and Uruguay which, although retaining their 200-mile claims, have enacted legislation permitting navigation and overflight beyond the twelve-mile limit.[44] It should be noted, in keeping with the Convention text, that several of the traditional three-mile countries, such as France, Japan and Canada, have recently extended their territorial breadths to twelve miles.

Territorial Sea Baselines

An important issue with respect to expanding offshore claims concerns the baselines from which the breadths of the territorial sea and other offshore zones are measured. The Convention text sets out specific criteria to be followed in determining "normal" baselines which follow the low-water line along the coast, and the closing lines for bays and river mouths. But article 6 also provides for straight baseline systems in localities where the coastline is deeply indented or there is a fringe of islands in the immediate vicinity of the coast. Where straight baselines are used, the waters between the baselines and the low-water line have the status of internal waters. Although general guidelines are provided for the delimitation of straight baselines, a number of countries appear to have acted in a manner inconsistent with the text, in that their coastlines do not justify use of the straight baseline regimes and/or the baselines delimited are more sweeping than is provided for in article 6.[45]

41. OFFICE OF THE GEOGRAPHER, U.S. DEP'T OF STATE, NATIONAL MARITIME CLAIMS (1982) [hereinafter cited as NATIONAL MARITIME CLAIMS].
42. *Id.*
43. *Id.*
44. LIMITS IN THE SEAS No. 36, *supra* note 1, at 18, 55, 166.
45. Guinea, for example, which has a fairly even coastline, has delimited a sin-

Other Maritime Jurisdictional Zones

The need of a coastal State to exercise jurisdiction in its offshore waters has traditionally been related to its enforcement of its domestic laws. The seaward extension of national claims was particularly relevant with regard to smuggling; but other activities, such as violations of prohibition laws, were also important. To cope with the problems, the concept of the contiguous zone emerged, and in response to the need article 24 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone reads: "In a zone of the high seas contiguous to its territorial sea, the coastal State may exercise the control necessary to: (a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea . . . ."[46] The article also provides that "[t]he contiguous zone may not extend beyond twelve miles from the baseline from which the breadth of the territorial sea is measured."[47] Twenty-one States now have extra-territorial contiguous zones.[48] The new Convention text follows closely article 24 of the 1958 Convention but increases the permissible breadth of the contiguous zone to twenty-four miles.[49]

Much of the concern by coastal States over the breadth of the territorial sea has involved exclusive fishing rights and in the years since World War II the movement has grown to establish extra-territorial fishing grounds.[50] The 1958 Geneva Conventions contained no provisions for such action, but even in that year, twenty-three States claimed fishing jurisdiction beyond the limits of their territorial seas.[51] Many of these claims were to twelve miles or less, though there were six 200-mile claims. By 1973, at the time of the convening of UNCLOS III the number of extra-territorial fishing claims had risen to thirty-two, of which twelve

gle straight baseline covering most of the coast which measures 120 nautical miles in length.

46. Convention on the Territorial Sea and the Contiguous Zone, Apr. 29, 1958, art. 24(1)(a), 15 U.S.T. 1606, 1612, T.I.A.S. No. 5639, 516 U.N.T.S. 205, 220.

47. *Id.* art. 2.

48. Among these States are Bangladesh, Burma, Egypt, India, Netherlands, Norway, Saudi Arabia, Syria, Venezuela and the United States.

49. Convention, *supra* note 40, art. 33, para. 2.

50. A. HOLLICK, *supra* note 24, at 162.

51. Of these, Chile, Costa Rica, Ecuador, El Salvador, Honduras, Panama and Peru had 200-mile fisheries claims.

were to 200 miles.[52]

Exclusive Economic Zone

The fishing zone concept is closely related to that of the exclusive economic zone (EEZ), a zonal arrangement which grew out of UNCLOS III.[53] Within its EEZ, the coastal State has exclusive rights to the natural resources of the seabed and subsoil and of the superjacent waters (that is, fisheries), as well as jurisdiction with regard to marine scientific research, marine environmental protection and preservation, and the establishment and use of artificial islands, installations and structures.[54]

The EEZ rights include those of an exclusive fishing zone and of the continental shelf regime, as well as the additional jurisdictions noted above. For coastal States, the EEZ extends to 200 miles from the baseline from which the breadth of the territorial sea is measured.[55] Rights of navigation by foreign vessels and of overflight prevail in the EEZ beyond territorial limits.[56]

The EEZ concept was first presented at UNCLOS III in the summer of 1974. Since that time, even though the Convention text has yet to enter into force, fifty-six countries have established 200-mile economic zones (Appendix, Table 2).[57] Thirty-six other States have declared 200-mile exclusive fishing zones (EFZ), preferring to forego, at least for the time being, the additional rights available to them in the EEZ (Appendix, Table 3).[58] The total area closed off by these 200-mile zones is about 28 million square nautical miles,[59] or some 32 percent of the total ocean space of the world.[60]

Continental Shelf

A final zone of maritime sovereignty is the continental shelf defined in the Convention text as the seabed and subsoil of the submarine areas that extend beyond a coastal State's territorial sea throughout the natural prolongation of its land territory to the

52. To this list, *supra* note 50, were added Argentina, Brazil, Nicaragua, Somalia and Sierra Leone.

53. W. EXTAVOUR, THE EXCLUSIVE ECONOMIC ZONE: A STUDY OF THE EVOLUTION AND PROGRESSIVE DEVELOPMENT OF THE INTERNATIONAL LAW OF THE SEA 6, 301-02 (1979).

54. Convention, *supra* note 40, art. 56.

55. *Id.* art. 57.

56. *See id.* art. 56.

57. NATIONAL MARITIME CLAIMS, *supra* note 41, at 1.

58. *Id.*

59. Measurements are in square nautical miles. One square nautical mile equals 1.325 square statute miles or 3.430 square kilometers.

60. NATIONAL MARITIME CLAIMS, *supra* note 41, at 1.

outer edge of the continental margin.[61] The "legal" definition, as contained in the text, differs from the physical or "geomorphological" definition in four respects. First, the legal definition includes most of the total continental margin—shelf, slope and rise. Second, the legal shelf terminates not at the base of the rise, but at some point landward of the base, according to a set of alternative formulae. Third, the legal shelf begins only at the outer limits of the territorial sea, rather than at the low-water line. Finally, the legal shelf extends seaward to the outer edge of the continental margin or "to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."[62] Clearly a deep seabed, such as Peru's 200 miles off a narrow-shelf coast, does not conform with the physical continental margin, yet Peru has sovereign rights to this expansive area's natural resources.

In situations where the physical continental margin extends beyond the 200-mile limit, the Convention text provides a set of alternative criteria for determining the geographical limits to the legal shelf.[63] The task of delimiting the outer boundaries of the legal continental shelf beyond 200 miles will be a difficult and time-consuming one, which few of the broad-margin coastal States have yet addressed.[64] According to article 82 of the Convention, the coastal State shall make payments or contributions in kind to the International Seabed Authority once it begins commercial exploitation of the non-living resources of the legal continental shelf in areas beyond the 200-mile limit.[65] Table 4

61. Convention, *supra* note 40, art. 76, para. 1.

62. *Id.* The above provision guarantees the coastal State sovereign rights over the natural resources of the entire extent of its exclusive economic zone, including the seabed, the subsoil and the superjacent waters.

63. According to article 76, the outer edge of the continental margin, more than 200 miles from the territorial sea baselines, may be determined either by a line connecting fixed points not more than sixty miles from the foot of the continental slope, or a line connecting fixed points on the continental rise, at each of which the thickness of the sedimentary rocks is at least one percent of the shortest distance from such point to the foot of the continental slope. There are geographic limits even here—350 nautical miles from the baseline, or 100 miles seaward of the 2,500-meter isobath. *Id.* paras. 4, 5, 7.

64. Officials of the Government of Canada have reported that the outer limits of jurisdiction on their continental shelf have been determined, and that an official map will soon be forthcoming from the Canadian Oil and Gas Lands Administration in Ottawa.

65. Convention, *supra* note 40, art. 82, para. 1.

(Appendix) lists the "Broad-Margin" States which have substantial areas of continental margin seaward of the 200-mile limit.[66]

Archipelagic States

One of the political phenomena which has occurred in the years since World War II has been the achievement of independence by countries composed solely of island groups. Prior to 1945 there were only three independent multi-island States—Japan, New Zealand, and Great Britain. In all three cases their territory consisted of one or more major islands, with a few smaller ones on the periphery. But since that time about twenty multiple-island countries have become independent. Following independence, several governments became concerned over the status of their inter-island waters. Should each island, islet and rock have a territorial sea of its own, or could the island unit be closed off as a legal archipelago, with the waters inside the closing line having a special status, akin to internal waters? In 1960, Indonesia carried out this exercise of closing off its entire archipelago as a separate unit.[67] The action met strong resistance from the maritime States which feared for the navigational freedoms of their vessels passing through Indonesian waters.[68]

Although the archipelago concept won little support at UNCLOS I, it did receive recognition at UNCLOS III, and a description of the technique for dealing with "archipelagic States" is contained in the Convention text.[69] Briefly stated, an insular State, whose geography conforms to specified criteria,[70] has the right to delimit straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago.[71] Seaward of these lines it would measure its territorial sea and exclusive fishing or economic zone. Within the lines, the inter-island

66. *See infra* Appendix, Table 4 (data from the Office of the Geographer, U.S. Dep't of State).

67. OFFICE OF THE GEOGRAPHER, U.S. DEP'T OF STATE, LIMITS IN THE SEAS NO. 35, at 1 (1971).

68. Syatauw, *Revisiting 'The Archipelago'—An Old Concept Gains New Respectability*, 19 INDIA QUART. 104, 104-19 (1973); *see also* M. LEIFER, MALACCA, SINGAPORE, AND INDONESIA 23-25 (1978).

69. Convention, *supra* note 40, art. 47.

70. The two principal criteria are, first, that the ratio of the water enclosed within the baselines to the area of the enclosed land, including atolls, is between 1 to 1 and 9 to 1; second, that the length of the closing baselines shall not exceed 100 miles, except that 3 percent of the number may be up to a maximum length of 125 miles. *Id.* paras. 1, 2.

71. *See, e.g.*, P. RODGERS, MIDOCEAN ARCHIPELAGOS AND INTERNATIONAL LAW: A STUDY IN THE PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW 207 (1981); Andrew, *Archipelagos and the Law of the Sea: Island Straits States or Island-Studded Space?* 2 MARINE POL'Y 46 (1978); Amerasinghe, *The Problem of Archipelagos and the Law of the Sea*, 23 INT'L & COMP. L. Q. 539, 539-575 (1974).

waters would be "archipelagic," through which ships of all States enjoy the right of innocent passage.[72] Further, "archipelagic sealanes" would be designated passing through the archipelago, conforming to normal passage lanes used as routes for international navigation or overflight. Along such sealanes, foreign ships and aircraft enjoy the right of transit. The net effect of the archipelago provisions is to further close off considerable areas of former high seas, particularly in the Pacific. Table 5 (Appendix) presents a partial list of archipelagic States.[73] It should be pointed out that despite the incompleted status of the Convention text, a number of island countries have already undertaken the delimitation of their archipelagic baselines. Also, some of the steps taken in designating legal archipelagos fail to conform to the provisions outlined in the Convention text.[74]

Areas of Special Competence

Closed Areas and Restricted Zones

Over and above the patterns of territorial, contiguous, and exclusive economic or fisheries zones, archipelagos, and continental shelves, there are forms of "special competence" which further reduce the areas of free seas available to the use of all countries. One group of these are the "closed" or "restricted" seas and bays that generally have the status of internal waters and are closed off at their entrance by straight baselines. Seaward of these lines the coastal state measures its territorial sea and other offshore zones.

The most frequently used method for closing off a semi-enclosed area as internal waters is to claim it as an historic bay. Although the legal bases for such claims are imprecise, a number of countries have proceeded to designate these areas.[75] Notable examples of historic bays are Canada's claim to Hudson Bay, China's claim to the Gulf of Pohai, Burma's claim to the Gulf of Martaban, and Soviet claims to the White Sea, Cheshskaya Gulf,

72. "Archipelagic" waters are virtually the same as territorial waters.

73. *See infra* Appendix, Table 5 (data from the Office of the Geographer, U.S. Dep't of State).

74. As shown by the data in Appendix, Table 5, *infra*, for example, a number of countries have claimed an archipelagic regime for island groups over which they still exercise sovereignty.

75. M. STROHL, THE INTERNATIONAL LAW OF BAYS 253-58 (1963).

and Peter the Great Bay (Appendix, Table 6).[76] Soviet writings are not clear as to the status of claims to the Gulf of Riga and the Sea of Azov, to the special nature of the Sea of Okhotsk as an internal sea, or to the status of the Arctic seas north of Siberia as "claimed seas."

A number of coastal States have announced the creation of "security zones" seaward of, and adjacent to, their territorial limits, in which certain foreign military activities are prohibited. North Korea, for example, declared in 1977 that it had established a military zone extending to fifty nautical miles from its coast.[77] Within this zone (which included the twelve-mile territorial sea), navigation or overflight by any vessel is prohibited without prior permission. Such action is in violation of article 58 of the new Convention text.[78] In the same year Vietnam proclaimed a twenty-four-mile security zone, extending to twelve miles beyond its territorial sea.[79] Again, foreign warships must seek prior permission to enter the security zone. Syria holds that foreign warships need prior permission to come within thirty-five miles of the Syrian coast.[80] And, although such regulations are also not justified in the Convention text, a number of coastal States have laws which require prior notification, (and many times, also approval) before warships can enter their territorial sea.[81]

The Arctic

A final area of special competence is the Arctic. Canada and the Soviet Union have adopted the "sector principle," under which converging meridians, marking the eastern and western extent of their Arctic coasts, are carried northward to the Pole. All islands found within these sectors belong to the respective continental power.[82] But there are also indications that the governments of the two countries believe that the Arctic water areas within these sectors have a special status. It is argued that because of the fragile nature of the Arctic environment the countries must take special precautions against vessel source and other forms of pollution. In 1970, Canada enacted the Arctic Waters Pollution Prevention Act, which asserts Canada's jurisdiction to regulate all shipping in contiguous zones up to one hundred

76. *See infra* Appendix, Table 6 (data from the Office of the Geographer, U.S. Dep't of State).
77. LIMITS IN THE SEAS No. 36, *supra* note 1, at 99.
78. Convention, *supra* note 40, art. 58.
79. LIMITS IN THE SEAS No. 36, *supra* note 1, at 171.
80. *Id.* at 151.
81. *Id.*
82. W. BUTLER, NORTHEAST ARCTIC PASSAGE 122-23 (1978).

miles off its Arctic coasts in order to guard against pollution of the region's marine resources.[83] The Act applies to waters north of 60° north latitude, and provides for the establishment of shipping safety control zones, within which the government may make regulations relating to navigation.[84] Statements by Canadian officials in recent years indicate that Canada considers the waters within its Arctic archipelago to be "Canadian waters" and rejects claims that any part of the Northwest Passage through these islands constitutes an "international strait." So far as the Soviets are concerned, the principal direct challenge to the Soviet position regarding the status of the waters north of Siberia occurred in 1967 when permission was denied for the passage of the United States Coast Guard icebreakers *Edisto* and *Eastwind* through Vilkitski Strait, connecting the Kara and Laptev seas.[85] The icebreakers turned back rather than attempt passage.

THE IMPACTS OF CURRENT JURISDICTIONAL CLAIMS ON OCEAN USE

The new pattern of national claims to offshore control has had, and will continue to have, considerable impact on various forms of ocean use. Most of the claims conform in general outline with the provisions of the Convention text, but there are notable exceptions, including territorial sea claims in excess of twelve miles, and regulations involving prior notification and consent for the passage of warships in the territorial sea. It is unclear how strongly these non-conforming claims will be pursued. It is also unclear what the legal status of certain Convention text provisions will be when applied to States which have not signed and/or are not parties to the Convention once it has entered into force.

General Considerations

The Uneven Allocation of Offshore Areas

Granting each of the coastal States the right to a 200-mile exclusive economic or fisheries zone results in conditions of gross inequities. Some countries, such as the United States, Indonesia and New Zealand, have enormous 200-mile zones; the United States,

83. Bilder, *The Canadian Arctic Waters Pollution Prevention Act*, in LAW OF THE SEA: THE UNITED NATIONS AND OCEAN MANAGEMENT 204 (L. Alexander ed. 1971).
84. *Id.*
85. W. BUTLER, *supra* note 82, at 122.

for example, measures over two million square nautical miles. It is estimated that the combined 200-mile zones of the ten countries with the largest zones encompass one-third of the world's economic zone area.[86]

On the other hand, there are coastal countries such as Iraq, Jordan, Zaire and Belgium, which have almost no 200-mile zone whatever. And there are thirty land-locked States with no offshore zones at all (Appendix, Table 7).[87]

Considerations of the possible value of 200-mile zones should not be based on size alone. What are the potential resources included within the zones? Are there important commercial fish stocks? Are there shelf resources, particularly hydrocarbons? The latter question involves the issue of whether all or most of the zones are underlain by a physical continental shelf or margin. Seven of the ten States having the largest 200-mile zones are also listed as "Broad-Margin States";[88] only Japan, Mexico, and Chile are excluded.

In terms of commercial fish stocks, the living resources of the ocean tend to be concentrated either in the shallow shelf or bank areas of the world or, for certain pelagic (free-swimming) species, where upwellings of currents carry vital plankton to sustain living aquatic resources. The latter phenomena are found off such west coast countries as Peru and Namibia.

Within the range of shallow-water fisheries, the most fertile grounds for commercial fishing are found in the middle latitudes. Among the nations whose 200-mile zones contain extensive fishing grounds are the United States, the Soviet Union, Japan, Canada, Iceland, Norway, and Argentina. On the other hand, countries such as Kenya, Tanzania, and the Caribbean island States claim that the ecological nature of their offshore waters has greatly limited commercial fish resources in their 200-mile zones. There may be more abundant fish resources off other tropical and subtropical countries, but the individual stocks tend to be small and the species considerably intermixed. Such conditions greatly complicate the methods of fish processing and of marketing.

With respect to offshore oil and gas, a similar pattern of inequity exists. Countries having extensive hydrocarbon resources in their 200-mile zones include the United States, Canada, Mexico,

86. NATIONAL MARITIME CLAIMS, *supra* note 41, at 5.

87. Alexander, *The Disadvantaged States and the Law of the Sea*, 5 MARINE POL'Y 196 (1981).

88. *See* Appendix, Table 4 (data from the Office of the Geographer, U.S. Dep't of State).

United Kingdom, Norway, Indonesia, Nigeria, the Persian Gulf States (particularly Saudi Arabia and United Arab Emirates), Brazil, Gabon, Angola, India, Malaysia, China, and New Zealand. Combining the commercial potentials for both living and non-living resources in the 200-mile zones leads to the conclusion that only a few countries are extremely well off in terms both of the size of their zones and the marine resource potentials which they contain.

Maritime Boundary Delimitations

Seaward extension of maritime jurisdictional zones brings increased problems of delimitation of the boundaries between opposite and adjacent States. Initially, adjacent countries must delimit any boundaries separating their internal waters from one another.

There are no "ground rules" for such a delimitation. If the area of internal waters is an extensive one, as in the case of the Gulf of Maracaibo between Venezuela and Colombia, settlement of the boundary may be a long and difficult process.

Seaward of the baselines for measuring the respective States' territorial seas, the question arises of the division of territorial waters of opposite and adjacent States. Article 15 of the Convention text reads:

> Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

Beyond the territorial sea are the continental shelf and margin. Prior to World War II, the legal status of a country's adjacent continental shelf was unclear and no attempts were made to delimit boundaries between the shelves of one state and another. Panama in 1921 and Venezuela in 1935 made claims to jurisdiction over pearl fisheries beyond the limits of their territorial seas,[89] and in 1941 Venezuela claimed jurisdiction over the resources of its continental shelf and superjacent waters.[90] The following year

89. Krueger & Nordquist, *supra* note 27, at 324.
90. *Id.*

Venezuela and the United Kingdom, on behalf of its territory Trinidad, agreed to a delimitation of the continental shelf in the Gulf of Paria, between Trinidad and the South American mainland.[91]

In the years since World War II, considerable controversy has surrounded the process of delimiting continental shelf boundaries. Article 6 of the 1958 Convention on the Continental Shelf reads:

> Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite to each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each State is measured.[92]

In several instances since 1958, States have resorted to litigation before the International Court of Justice (ICJ) in the delimitation of their shelf boundaries. One dispute was the North Sea Continental Shelf Cases (1969) between the Federal Republic of Germany and its neighbors Denmark and the Netherlands.[93] There, the ICJ ruled that Germany was not bound by the median-line provisions of the 1958 Convention, and that the countries should delimit their common shelf boundaries according to "equitable principles." Later cases before the Court involved the United Kingdom and France (1977)[94] and Libya and Tunisia (1982).[95]

To further complicate an already complex situation, there is now a need to delimit boundaries between opposite or adjacent EEZs or EFZs. Over the past several decades a number of legal arguments have developed, particularly through judicial decisions, with respect to continental shelf delimitations. Would such arguments also apply to economic or exclusive fishing zone delimitations? There had been no international judicial decisions relating to boundaries between fishing zones beyond the territorial sea, since such zones were not recognized by international law. A related question is whether a continental shelf boundary would necessarily be the same as an economic zone boundary.

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91. *Id.*

92. Convention on the Continental Shelf, Apr. 29, 1958, art. 6(1), 15 U.S.T. 471, 474, T.I.A.S. No. 5578, 499 U.N.T.S. 311, 316.

93. North Sea Continental Shelf Cases (Fed. Republic of Germany v. Denmark) (Fed. Republic of Germany v. Neth.), 1969 I.C.J. 3.

94. *See* Brown, *The Anglo-French Continental Shelf Cases*, 16 SAN DIEGO L. REV. 461, 463 n.7 (1979); *see also* Colson, *The United Kingdom-France Continental Shelf Arbitration*, 72 AM. J. INT'L L. 95, 95-112 (1978).

95. Cases Concerning the Continental Shelf (Tunisia v. Libya), 1982 I.C.J. 18 (Judgment of Feb. 24).

With respect to both the continental shelf and 200-mile zone boundaries, the Convention text offers little in the way of guidelines. According to article 74:

> The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.[96]

If no agreement can be reached within a reasonable period of time, the States concerned are directed to resort to dispute settlement involving binding decisions, as outlined in the Convention text.[97] The dispute may be submitted to the ICJ, the International Tribunal for the Law of the Sea, or an arbitral tribunal which is mutually acceptable to the parties involved. Identical provisions are provided in article 83 with respect to the delimitation of the continental shelf between States with opposite or adjacent coasts.

If all opposite and adjacent coastal countries (together with the dependent territories) declare 200-mile economic or fisheries zones, and then seek to draw the boundaries between overlapping areas, a number of new maritime delimitations would come into existence. Many countries which face one another across distances of less than 400 miles do not share a common continental shelf or margin. Puerto Rico and Venezuela, for example, face one another across 300 miles of the deep Caribbean basin but their 200-mile zones overlap. The same situation exists across the Mediterranean Sea between Spain's Balaeric Islands and Algeria, or in the South China Sea between the Philippines and China. It has been estimated that "[t]here may approximately be 331 potential maritime boundaries required by a universal claim to 200-mile zones."[98] For the United States alone (including its overseas territories) there would be approximately thirty maritime boundaries to be negotiated.[99]

The first case in which a maritime boundary decision has in-

96. Article 38 of the Convention, *supra* note 40, lists some considerations the court should apply in deciding issues in accordance with international law. Among these are international conventions establishing rules expressly recognized by the contesting States, international custom, and the general principles of law "recognized by civilized nations."

97. Convention, *supra* note 40, arts. 186-192 and Annexes V-IX.

98. Smith, *The Maritime Boundaries of the United States*, 71 GEOG. REV. 395, 397 (1981).

99. *Id.*

volved both the continental shelf and the 200-mile zones between countries is the United States/Canadian Case on the Delimitation of the Maritime Boundary in the Gulf of Maine Area.[100] The case is being submitted to a five-person Chamber of the International Court of Justice, and the decision should be a significant one for the delimitation of future continental shelf/200-mile zone boundaries. Perhaps, in time, some "principles" will evolve from judicial decisions, state practice, arbitrations, and other means, so that settlements of at least some of the 331 potential boundary disputes in the 200-mile zone may be facilitated. But there is little at the present time to suggest a speed-up in the process.

Living Marine Resources

In assessing the impact of jurisdictional claims on ocean use, consideration will be given first to the use of marine resources, and then to non-resource activities such as navigation, military uses and marine scientific research. The partitioning of the waters adjacent to the coast has had a profound effect on the harvesting of the living resources of the sea. Over 90 percent by volume of the world's commercial fish catch is estimated to be taken within the 200-mile belt.[101] The Convention text gives the coastal State sovereign rights for the purposes of exploring, exploiting, conserving and managing the natural resources of its economic zone, although it tempers these rights by calling on the State to adhere to a "full utilization" concept.[102] "Full utilization" means that the coastal State shall maintain or restore the harvested species at levels "which can produce the maximum sustainable yield as qualified by relevant environmental and economic factors."[103] If the State lacks the capacity to harvest the entire allowable catch, it shall give other States access to the surplus.[104]

When considered on the global scale the 200-mile concept would seem to have both positive and negative aspects with respect to living marine resources. The coastal State may protect its domestic fishermen from undue competition from foreigners, carry out necessary conservation measures throughout the zone,

100. Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States) (Advisory Opinion, Judgment of Feb. 1, 1982); *see, e.g.*, Rhee, *Equitable Solutions to the Maritime Boundary Dispute Between the United States and Canada in the Gulf of Maine*, 75 AM. J. INT'L L. 590-628 (1981).

101. Alexander & Hodgson, *The Impact of the 200-Mile Economic Zone on the Law of the Sea*, 12 SAN DIEGO L. REV. 569, 586 (1975).

102. *See* Convention, *supra* note 40, art. 62.

103. *Id.* art. 61, para. 3.

104. *Id.* art. 62, para. 2.

and derive revenues from the sale of rights to other countries to fish in the zone. It can also expel foreign fishing vessels from the zone if proscribed rules and regulations are not followed.[105]

On the negative side, a country possessing a small and/or resource-poor zone may be denied access to other zones of the area, except through bilateral agreements or regional plans. States with large distant-water fleets may also lack access to other countries' zones—a particularly acute problem for such countries as the Soviet Union, Japan, West Germany, United Kingdom, United States, Spain, Poland, Thailand, South Korea, Singapore and Taiwan.

The Convention text has no provision for handling trans-boundary stocks, and while it does suggest a regional approach to the management of highly migratory species, including tuna, swordfish, dolphin, sauries and marlins, the provisions may prove unworkable. Likewise, the text's approach to the management of anadromous stocks (for example, salmon and shad)[106] may not be a viable arrangement. What is important here is that eighty-nine countries now claim exclusive fishing limits of up to 200 miles (with or without attendant economic zone claims) and two others—Maldives and Tonga—claim rectangular or polygonal zones surrounding their island areas. Ninety-one zones should mean ninety-one sets of conservation, management and enforcement regulations, and ninety-one fisheries development programs. While it is impossible to generalize here on the changes taking place in the structure of world fisheries as a result of this enclosure movement, and the success countries have had in coping with new problems of management, a few points should be noted.

One point with respect to enclosure involves the activities of international fisheries organizations. At least in the short-term, countries—both developed and developing—having once acquired new ocean areas of fisheries jurisdiction, are reluctant to share management responsibilities either with their neighbors or with international groups. Some of the regional fisheries organizations composed primarily of developing States have made little pro-

105. The coastal State can also make political use of the right of access by foreign vessels to its exclusive fisheries as the United States did, following the Soviet invasion of Afghanistan, by expelling Soviet fishing vessels from its own 200-mile zone.

106. Convention, *supra* note 40, art. 66.

gress since the institution of the 200-mile zones in data acquisition and analysis and in the formulation of conservation measures; concurrently, several of the fisheries organizations of developed countries, particularly in the northwest and northeast Atlantic, have seen their memberships dwindle and have been forced to reorganize with their focus on waters beyond the 200-mile limits.

Another consequence has been an overcapacity of distant-water fishing fleets. In an effort to locate new sources of supply, vessels have been exploring and exploiting the Antarctic krill. Here, unlike the case in many other new fisheries, the interested parties have succeeded in concluding a Convention on the Conservation of Antarctic Marine Living Resources,[107] which is designed to carry out research on the krill and to formulate and adopt conservation measures before large-scale exploitation begins.

But the results of the protective action afforded by the creation of 200-mile zones may also lead to oversupply of vessels and gear. For example, in 1976, the year before the American Fishery Conservation and Management Act[108] took effect (in effect banning foreign fishing from the United States 200-mile zone), the number of fishing vessels of more than five gross registered tons in New England amounted to 562, according to the National Marine Fisheries Service, and there were 2,499 commercial fishermen.[109] The average yearly catch per vessel in constant dollars was worth $50,300.[110] By 1980, there were 836 registered vessels of over five gross tons in the New England fishery, the number of commercial fishermen had increased to 3,698 and the value of the average yearly catch per vessel had slid to $40,900.[111] Without some form of a limited entry scheme, the assets acquired through the enclosure movement may become dissipated.

Continental Shelf Resources

The continental shelf regime, as outlined in the Convention text,[112] would appear to grant the coastal State all the rights it requires in order to explore and exploit the non-living resources of its adjacent continental shelf. One potential problem is article 121, which holds that "[r]ocks which cannot sustain human habitation or an economic life of their own shall have no exclusive

107. Done in Washington, D.C., May, 1980 (not yet in force). *See* BIRNIE, LEGAL MEASURES FOR THE PREVENTION OF "PIRATE" WHALING 35 (1982).
108. Pub. L. No. 94-265, 90 Stat. 331 (1976).
109. N.Y. Times, Sept. 4, 1982, at 36, col. 3.
110. *Id.*
111. *Id.*
112. Convention, *supra* note 40, arts. 76-85.

economic zone or continental shelf." The British, who control Rockall Island, an uninhabited rock located 289 miles west of Scotland on Rockall Bank, maintain that the Rock has an exclusive fisheries zone of its own, as well as its own continental shelf.[113] There are other uninhabited oceanic islands where the justification for continental shelf and 200-mile claims may also arise. Australia's Heard and McDonald Islands in the Southern Indian Ocean, for example, are uninhabited, as are Johnston and Midway Islands, United States territories in the Pacific south of Hawaii. In a situation such as that of France's uninhabited Kerguelen Island, also in the southern Indian Ocean, there might be a question about the status of the fairly extensive continental shelf which surrounds the island.

Deep Seabed Minerals

Beyond the limits of national jurisdiction on the seabed is the international area[114] over which the International Seabed Authority (Authority) "shall take measures necessary to promote the growth, efficiency, and stability of markets for those commodities produced from the minerals derived from the Area, at prices renumerative to producers and fair to consumers."[115] Without going into the details of the Authority's operations, one might question the limits of the Authority's jurisdiction.

The geographic limits of a coastal State's legal continental shelf are described in the Convention text[116] and in time these should be duly established.[117] The concern noted above about the use of uninhabited rocks and islands as basepoints for measuring 200-mile zones is particularly relevant in the east central Pacific close to the Clarion-Clipperton Zone. In this Zone, stretching from off the Mexican coast to the vicinity of Hawaii, manganese nodules high in concentrations of nickel and copper have been found, and this may prove to be a prime area for early leasing and exploitation of nodules. But within this area are uninhabited islands, par-

113. Brown, *Rockall and the Limits of National Jurisdiction of the UK*, 2 MARINE POL'Y 181, 275 (1978).
114. Convention, *supra* note 40, art. 1.
115. *Id.* art. 151, para. 1(a).
116. *Id.* art. 76.
117. Article 76, paragraph 8 provides that the Commission on the Limits of the Continental Shelf "shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf." The final limits of the shelf shall be based on these recommendations.

ticularly the four Islas Revilla Gigedo belonging to Mexico and France's Clipperton Island, all of which might possess important nodule resources within their 200-mile radii.

A second problem relates to oceanic ridges which extend for thousands of miles through the ocean basins. One of these is the Mid-Atlantic Ridge, stretching from north of Iceland through the Azores, Ascension Island and Tristan da Cunha. The Convention text is unclear as to the distance along ridges of this sort[118] to which islands may claim jurisdiction; in years to come, some controversies may develop concerning the legitimacies of certain activities on oceanic ridges.

International Navigation

Issues of navigation by both military and non-military vessels played a key role in the decisions both by the United States and the Soviet Union in the late 1960s to press for a third Law of the Sea Conference. Article 16 of the 1958 Convention on the Territorial Sea and the Contiguous Zone had provided that "[t]here shall be no suspension of the innocent passage of foreign ships through straits which are used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State." Article 14 defined innocent passage as being "not prejudicial to the peace, good order or security of the coastal State." The concept of non-suspendable innocent passage does not include non-innocent passage, that is, passage which (in the interpretation of the coastal State or some other party) might be considered as detrimental to the coastal State's "peace, good order, or security."[119]

In the years since 1958, the United States, the Soviet Union, and other maritime States have sought a revision of article 16 which removes the reference to innocent passage. Innocent passage through straits does not include passage by warplanes over the strait, nor submerged passage of foreign submarines through the waterway.[120] For these and other reasons, the maritime States would prefer the concept of unimpeded transit passage through, and over straits which are used for international navigation.[121] Such passage by ships and aircraft, according to article 38 of the

118. *See id.*
119. *Id.* art. 19.
120. Pirtle, *Transit Rights and U.S. Security Interests in International Straits: The "Straits Debate": Revisited*, 5 OCEAN DEV. & INT'L L. 477, 481 (1978).
121. These straits are defined in article 37 of the Convention, *supra* note 40, as "used for international navigation between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone."

Convention text "shall not be impeded."[122]

According to John Norton Moore, who played a major role in the drafting of the Convention articles on transit passage, the articles satisfy United States navigational interests, both militarily and otherwise.[123] But Michael Riesman[124] disagrees, arguing that there is an absence in the text of an express right of submerged passage within the context of other provisions and that the competence of the coastal State is enhanced by the text to characterize any particular straits passage as violating "transit" requisites.

It should be noted that ships travelling the sealanes of the world pass through the 200-mile zones of many coastal States, whether or not in transit through one or more of the international straits. The straits themselves are of three categories, according to breadth. First, there are about sixty important straits which would be closed off by the extension of the territorial sea breadths from three to twelve miles. Second, there are perhaps twenty frequently-used straits less than six miles in breadth which would be closed off even by adjacent three-mile territorial seas. And finally, there are some thirty important straits of breadths greater than twenty-four miles; through such straits, a belt of high seas would extend, even if both bordering States claimed a twelve-mile territorial sea.

With regard to the movement of foreign vessels through a country's EEZ, the question may arise as to whether the coastal State can deny or restrict passage on the grounds of the danger of vessel-source pollution. Actually, there are three categories of potential transiting vessels—warships, other vessels owned or operated by a State and used on government non-commercial service, and private vessels, the bulk of which are commercial. Ships of the first two categories enjoy sovereign immunity from environmental protection regulations within the EEZ.[125]

The coastal State has the right, within its EEZ, to adopt nondiscriminatory rules and standards against vessel-source pollution and to enforce these when necessary. The rules and standards shall be established through "the competent international

122. *Id.* art. 38, para. 1.
123. Moore, *The Regime of Straits and the Third United Nations Conference on the Law of the Sea*, 74 AM. J. INT'L L. 77, 77-121 (1980).
124. *See* Reisman, *The Regime of Straits and National Security: An Appraisal of International Lawmaking*, 74 AM. J. INT'L L. 48, 48-76 (1980).
125. Convention, *supra* note 40, art. 211, para. 4-5.

organization" (IMO—the Intergovernmental Maritime Organization), or through a general diplomatic conference.[126] The rules and standards to be applied against foreign vessels in the EEZ shall not be more effective than the international ones, except for conditions of special circumstance where, in clearly defined areas of the EEZ, it is necessary, because of oceanographic and ecological conditions, to adopt special mandatory measures for the prevention of pollution from ships.[127] Yet despite these safeguards, a number of coastal States have already adopted domestic legislation with regard to vessel-source pollution which is more severe than the rules and regulations of the IMO Convention.[128] The passage of "potential polluters," such as nuclear-powered vessels, vessels carrying nuclear or other "hazardous" cargoes, and ammunition ships, through the EEZs of some coastal States may in time be jeopardized, treaty or no treaty.

Military Uses

The military interest in the process of expanding maritime claims relates to aspects of the process which might threaten the ability of naval and air forces to move through and over the world's oceans to the degree necessary to meet a wide variety of military and politico-military conditions. The military is particularly concerned with passage through straits, archipelagic sealanes, and other "choke points" and is insistent on the right to transit such areas on the surface, in the superjacent air space, and, where depth permits, by submerged submarines. In addition, the military holds that the right of innocent passage through territorial waters, as outlined in article 17 of the Convention text, and the preservation of high seas freedoms in the EEZ, as noted in article 58, also serve to meet its requirements.[129]

But there are several potential problems on the horizon. As noted earlier, there is a tendency on the part of a number of States to enact domestic legislation requiring that the passage of warships (and in some cases also, aircraft) through their territorial waters be allowed only after the transiting State has made prior notification of the passage to the coastal State; in a number of cases consent must also be obtained.[130] At the present time twenty-three States have such a requirement in their legisla-

126. *Id.* para. 1.
127. *Id.*
128. Burke, *National Legislation on Ocean Authority Zones and the Contemporary Law of the Sea*, 9 OCEAN DEV. & INT'L L. 289, 289-322 (1981).
129. Richardson, *Power, Mobility and the Law of the Sea*, 58 FOR. AFF. 902, 915 (1980).
130. *Id.* at 904.

tion.[131] Also, as noted earlier, about eighteen States have extra-territorial "security zones" in which passage by warships and military aircraft requires prior notification and approval.[132] Another troublesome trend is the prohibition by a few coastal States of the passage of nuclear-powered vessels through their coastal waters.[133] Since some of the newer vessels of the major military countries are nuclear-powered, this prohibition could give rise to difficulties.

The military is sensitive to expanding territorial claims. Because the United States still claims only a three-mile territorial sea, the government holds that it is not required to recognize territorial seas greater than this breadth proclaimed by other countries. Moreover, the United States has on occasion sought to challenge what it believed to be exorbitant claims by other countries to coastal water bodies on the grounds of their being historic waters.[134] One such challenge in Libya's Gulf of Sidra in August 1981 led to a confrontation between American and Libyan planes and the loss of two Libyan aircraft.

Marine Scientific Research

Only relatively few nations of the world have the capability of sustaining major marine scientific efforts in areas well beyond their own EEZs. Parenthetically, most of the distant-water research carried out by these few nations occurs within 200 miles of the shorelines of other countries. Article 2 of the 1958 Geneva Convention on the High Seas[135] noted the high seas freedoms which were to prevail throughout the oceans beyond territorial limits, including freedom of navigation, overflight, fishing, the laying of submarine cables and pipelines, and other freedoms "which are recognized by the general principles of international law." To the United States and other major maritime powers, these "other freedoms" included marine scientific research. Consent of the coastal State would be required only with respect to marine scientific research undertaken within a State's territorial sea or

131. NATIONAL MARITIME CLAIMS, *supra* note 41.
132. *Id.*
133. *Id.*
134. *See* V. PRESCOTT, *supra* note 36, at 97; *see also supra* note 74.
135. Apr. 29, 1958, art. 2, 13 U.S.T. 2312, 2314, T.I.A.S. No. 5200, 450 U.N.T.S. 82, 82.

"concerning the continental shelf and undertaken there."[136]

The contest at UNCLOS III for specific recognition of the freedom of scientific research within the newly-conceived EEZ was an uneven one, pitting the United States, Western Europe, and Soviet bloc countries against scores of other States which felt that unbridled scientific research by a few developed countries within the EEZs of other States represented an infringement of their national rights. Eventually the supporting coalition broke apart, and article 56 of the Convention text grants the coastal State, in its EEZ, jurisdiction with regard to marine scientific research.[137] The consequence of this condition means that ultimately about one-third of the world's ocean space (and in many respects the most scientifically interesting portion) will be closed to foreign research vessels except through the acquisition of prior consent. Although article 246 reads: "Coastal States shall, in normal circumstances, grant their consent for marine scientific research projects by other States or competent international organizations in their exclusive economic zone or on their continental shelf . . .," it seems likely—for political, economic, or other reasons—that consent for foreign scientific research projects may at times be withheld or seriously delayed.[138]

Some Potential Trends in the Ocean Enclosure Movement

Listed below are several categories of activities associated with the ocean enclosure movement which can be expected to occur within the coming years.

Continued Expansion of Maritime Claims within the Current Jurisdictional Framework

Some countries, such as Belize, Finland, Italy and Israel, which have not yet asserted a 200-mile zone, may do so in time. Others may expand the claimed competencies in their zone, changing them from exclusive fisheries to exclusive economic zones. Archipelagic states (for example, the Bahamas, Comoro Islands, and Vanuatu—formerly New Hebrides) may become closed off by archipelagic baselines. And although it presently seems unlikely that a coastal State would extend its exclusive economic or fisheries zone more than 200 miles offshore, certain countries may seek forms of functional jurisdiction beyond that limit, as in the

136. Geneva Convention on the Continental Shelf, art. 5(8), 15 U.S.T. 471, 474, T.I.A.S. No. 5578, 499 U.N.T.S. 311, 316.

137. Convention, *supra* note 40, art. 56, para. 1(b)(ii).

138. *See, e.g.*, Wooster, *Research in Troubled Waters: U.S. Research Vessel Clearance Experience, 1972-1978*, 9 Ocean Dev. & Int'l L. 219, 219-239 (1981).

case of straddling stocks which move back and forth across the 200-mile limit, or of perceived needs to take extraordinary measures to protect against vessel-source pollution.

Increased Expressions of Nationalism in Offshore Jurisdictional Zones

This trend may take various forms, such as the arrest of foreign fishing vessels, refusal to grant consent for foreign marine scientific research in the EEZ, and greater restrictions against the passage of military vessels and aircraft in and beyond the territorial sea. Hopefully, such expressions will be primarily a short-term phenomenon.

Improved Environmental Protection Measures in the EEZ

Since the right of a coastal State to protect the marine environment of its EEZ is guaranteed by article 56 of the Convention text, threats to environmental quality should diminish over time. Further, there is opportunity to give special consideration to areas of the EEZ which have unique oceanographic and ecological conditions (for example, barrier reefs) as well as ice-covered areas where pollution could cause irreversible disturbances of the ecological balance.

Uncertainties as to Binding Force of Convention Text Articles

This may work in any of several ways. First, there are jurisdictional assertions which have been and will continue to be made which are beyond the framework of the Convention text.[139] Once the Convention comes into force, these claims will be subject to challenge—as indeed they are prior to entry into force.

Second, there are provisions in the text which countries may fail to live up to. Among these are the regulations for managing highly migratory species, and for providing special rights and compensations to land-locked and geographically disadvantaged States. Finally, as noted earlier, there is the question of the applicability of the Convention text provisions to non-party States.

139. *See, e.g.*, Pharand, *Historic Waters in International Law with Special Reference to the Arctic*, 21 U. TORONTO L. J. 1, 1-14 (1971).

Development of a Modus Vivendi Between and Among States with Adjacent or Opposite EEZs

Despite the increased nationalism noted earlier, coastal States within a relatively short space of time are realizing the need for bilateral and subregional forms of cooperation in such matters as fishing, shipping, pollution control, law enforcement and the development of offshore hydrocarbons. This means at least *ad hoc* agreements, and the postponement of efforts to settle such serious problems as maritime boundary delimitation.

Gradual Re-emergence of Marine Regional Arrangements

Moves toward regional arrangements may initially take relatively innocuous forms, such as the basin-wide pollution control activities of the Regional Seas Programme.[140] There may be regional agreements to adopt uniform regulations with respect to foreign marine scientific research, or the creation of nuclear-free zones in a common area. In time such arrangements will carry with them increased costs for the coastal States, along with increased efforts to ban certain activities by non-littoral States.

There are, of course, other categories of activities affected by the ocean enclosure movement, but the forms they may take appear unclear at this time. Will the total world fish catch grow or decline as a result of the apportionment of former high seas fishing grounds? What indirect effects may the creation of the International Seabed Authority have on future non-seabed uses? The past fifteen years have seen cataclysmic changes both in the legal regime of the oceans and in the political dialogues among ocean-user States. The next fifteen years will hopefully provide breathing space for adjustment to the new conditions.

140. *See* Alexander, *Regional Arrangements in the Oceans*, 71 AM. J. INT'L L. 84, 104 (1977).

APPENDIX

Table 1

Territorial Sea Claims
(January 1, 1983)

Three Nautical Miles (24)

Antigua and Barbuda
Australia
Bahamas, The
Bahrain
Belgium
Belize
Chile
Denmark
Dominica
German Dem. Rep.
Germany, Fed. Rep.
Ireland
Jordan
Kiribati
Netherlands
Qatar
Saint Lucia
Saint Vincent and the Grenadines
Singapore
Solomon Islands
Tuvalu
United Arab Emirates
United Kingdom
United States

Four Nautical Miles (2)

Finland
Norway

Six Nautical Miles (4)

Dominican Republic
Greece
Israel
Turkey (12 in the Black Sea)

Twelve Nautical Miles (77)

Algeria
Bangladesh
Barbados
Bulgaria
Burma
Canada
Cape Verde
China
Colombia
Comoros
Costa Rica
Cuba
Cyprus
Djibouti
Egypt
Equatorial Guinea
Ethiopia
Fiji
France
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Iceland
India
Indonesia
Iran
Iraq
Italy
Ivory Coast
Jamaica
Japan
Kampuchea
Kenya
Korea, North
Korea, South
Kuwait
Libya
Malaysia
Malta
Mauritius
Mexico
Monaco
Morocco
Mozambique
Nauru
New Zealand
Oman
Pakistan
Papua New Guinea
Poland
Portugal
Romania
Sao Tome & Principe
Saudi Arabia
Seychelles
South Africa
Soviet Union
Spain
Sri Lanka
Sudan
Suriname
Sweden
Thailand
Trinidad & Tobago
Tunisia
Vanuatu
Venezuela
Vietnam
Western Samoa
Yemen (Aden)
Yemen (Sana)
Yugoslavia
Zaire

Fifteen Nautical Miles (1)

Albania

Twenty Nautical Miles (1)

Angola

Thirty Nautical Miles (2)

Nigeria
Togo

Thirty-Five Nautical Miles (1)

Syria

Fifty Nautical Miles (4)

Cameroon
Gambia, The
Madagascar
Tanzania

Seventy Nautical Miles (1)

Mauritania

One Hundred Nautical Miles (1)

Senegal

Two Hundred Nautical Miles (14)

Argentina*	El Salvador*	Panama
Benin	Ghana	Peru
Brazil	Liberia	Sierra Leone
Congo	Nicaragua	Somalia
Ecuador		Uruguay*

Rectangular/Polygonal Claim (3)

Maldives	Philippines	Tonga

* Overflight and navigation permitted beyond twelve nautical miles.

Table 2

States with 200-Mile Exclusive Economic Zones

Bangladesh	Honduras	Norway
Barbados	Iceland	Oman
Burma	India	Pakistan
Cape Verde	Indonesia	Papua New Guinea
Colombia	Ivory Coast	Philippines
Comoros	Kampuchea	Portugal
Costa Rica	Kenya	Sao Tome & Principe
Cuba	Korea, North	Seychelles
Djibouti	Madagascar	Spain
Dominica	Maldives	Sri Lanka
Dominican Republic	Malaysia	Suriname
Fiji	Mauritania	Thailand
France	Mauritius	Togo
Grenada	Mexico	United Arab Emirates
Guatemala	Morocco	Vanuatu
Guinea	Mozambique	Venezuela
Guinea-Bissau	Nauru	Vietnam
Guyana	New Zealand	Yemen (Aden)
Haita	Nigeria	

Table 3

States with 200-Mile Exclusive Fisheries Zones

Angola	Japan
Argentina	Kiribati
Australia	Liberia
Bahamas, The	Netherlands

Benin	Nicaragua
Brazil	Panama
Canada	Peru
Chile	Poland
Congo	Sierra Leone
Denmark	Solomon Islands
Ecuador	Somalia
El Salvador	South Africa
Gambia	Soviet Union
German Democratic Republic	Sweden
Germany, Federal Republic of	Tuvalu
Ghana	United Kingdom
Iran	United States
Ireland	Uruguay

Table 4

Broad Margin States

Argentina	Ireland	South Africa
Australia	Madagascar	Soviet Union
Brazil	Mauritius	Spain
Canada	Namibia*	Sri Lanka
France	New Zealand	United Kingdom
India	Oman	United States
Indonesia	Somalia	

* not yet independent

Table 5

States with Archipelagic Claims

Cape Verde Islands	Philippines
Fiji*	Sao Tome & Principe
Indonesia	Solomon Islands***
Papua New Guinea**	

Archipelagic Claims to Non-Independent Areas

Danlac Archipelago (Ethiopia)	Faeroe Islands (Denmark)
Galapagos Archipelago (Ecuador)	Svalbard (Norway)

* no closing lines yet determined
** interim delimitation arrangement
*** five separate areas enclosed

Table 6

Important Historic Bays and Other Closed Water Bodies

Argentina	Gulf of Matias
	Gulf of San Jorge
Australia	St. Vincent Gulf
	Shark Bay
	Spencer Gulf
Burma	Gulf of Martaban
Canada	Hudson Bay

China	Gulf of Pohai
Italy	Gulf of Taranto
Libya	Gulf of Sidra
Panama	Gulf of Panama
Soviet Union	Cheshskaya Gulf
	Sea of Okhotsk

Table 7

Land-Locked States

Afghanistan	Hungary	Paraguay
Andorra	Laos	Rwanda
Austria	Lesotho	San Marino
Bhutan	Liechtenstein	Swaziland
Bolivia	Luxembourg	Switzerland
Botswana	Malawi	Uganda
Burundi	Mali	Upper Volta
Central African Republic	Mongolia	Vatican City
Chad	Nepal	Zambia
Czechoslovakia	Niger	Zimbabwe